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REMARKS

Reconsideration of the claims standing in this application are respectfully requested.

Claims 21 was amended to remove two typographical errors. Applicant submits that Claims 1, 3-5, 7, 8, 10, 12, 14, 15, 17-19 and 21 are patentable over the prior art relied upon by the Examiner and should be allowed.

Claim 1, 3-5, 8, 12, 15, 19 and 21 have been rejected as being anticipated by Litman. Litman describes a stocking and, more particular, a padded stocking which is adapted for use when one wears heavy shoes (column 1 lines 7 to 9). The sock 3 has a body 5. At the top of the sock 3 there is an elastic band 7 (column 1 lines 38 to 43). Situated around the ankle are four substantially contiguous padded areas 9, 10, 11 and 12 (column 1 lines 45 to 47). Each of the paddings consist of an outside layer 12A, an inside layer 12B and a suitable padding 12C (column 2 lines 1 to 3). The inside layer cloth, as well as the padding itself, is held in place with suitable stitching (column 2 lines 5-6).

A comparison of the present invention and Litman shows that they have nothing in common. The present invention creates a padding that is arranged in the area of the Achilles tendon. In contrast to Litman, where the padding in the area of the Achilles tendon extends around the Achilles tendon and the depression besides the Achilles tendon, the present invention creates a cushion padding that is formed from at least two spacer cushion pads, which are positioned on both sides of and along the Achilles tendon, and a transition piece that is inserted between the spacer cushions. In the present invention, the spacer cushion pads are constructed and arranged to stand out distinctly relative to the transition piece. The smaller parts of the

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paddings shown in Litman, designated 14, are arranged on both sides of the sock, or in other words, besides the Achilles tendon. This is the opposite of the present invention which teaches to arrange the thinnest part of the sock on the Achilles tendon and the padding besides it. Litman teaches to arrange the padding on the Achilles tendon and the stitching 14 (which is thinnest) besides it. The fair teachings of Litman have nothing to do with the present invention.

Litman does not anticipate the present invention. as defined in Claims 1, 3-5, 8, 12, 15, 19 and 21. The allowance of these claims is urged.

Claims 7, 10, 14, 17 and 18 were rejected as being unpatentable over Litman in view of U.S. 6,286,151 (Lambertz). Previously, applicant noted that Lambertz describes a climate-adjusting sock 1, which has an air channel 3 proceeding from the sole 2 of the foot up to the band 4 and which is formed of climate-adjusting net-type knit fabric (column 2 lines 25 to 29). The interior of sock 1 is provided with a padded instep cushion or padding 5 and, in the area of the shin it is provided with a padded shin cushion 6 (column 2 lines 34 to 36). The area of the Achilles tendon is protected by means of a padded cushion 7. The padded cushion 7 consists of a climate-adjusting fabric (column 2 lines 42 to 46). The area of the calf is also provided with padded cushions, whereby rod-type paddings 8 are provided (column 2 lines 47 to 49). The sock 1 is also provided with an X-cross support band 9 (column 2 lines 53-54).

Comparing the sock of Lambertz with the sock of the present invention, it can clearly be seen, that the present invention is not disclosed by Lambertz. Lambertz does not show a cushion padding in the area of the Achilles tendon, which is formed from at least two spacer cushion pads, which are positioned on both sides of and along the Achilles tendon, and a transition piece

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which is inserted between the spacer cushions. The transition piece is thinner than the spacer cushion pads. On the contrary, Lambertz teaches the support by only one padding at the Achilles tendon. As a consequence, there is no transition piece, which is inserted between two spacer cushion pads and therefore, the spacer cushion pads cannot be designed in such a manner that they stand out distinctly relative to the transition piece. The padding arranged at the Achilles tendon of the sock of Lambertz is completely different from that of the present invention.

Given the differences between the teachings of Litman and Lambertz, it is not seen how they can be properly combined to produce the claimed invention. In rejecting claims under 35 U.S.C. 103, the Examiner bears the initial burden of presenting a prima facie case of obviousness. Factors to consider are the scope and content of the prior art, the differences between the prior art and the claims at issue, and the level of ordinary skill in the art. When the scope and content of the prior are properly considered, as well as the differences between the prior art and the claims at issue, it is evident the Examiner has failed to meet her burden of proof. Applicant submits that Claims 7, 10, 14, 17 and 18 are patentable and should be allowed.

When Applicant filed the RCE it was noted that the Chinese Patent Office had granted a patent on a corresponding patent application and the European Patent office (EPO) has decided to grant a patent. Counsel has been informed that patents have now been granted in Australia (2003292969) and in the EPO (EP 1562681). While the Examiner has chosen to ignore actions from foreign patent offices, it is noted that the USPTO has established a 21st Century Strategic Plan to transform the USPTO into a more quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. One purpose of this

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Strategic Plan was to share search results from one IP office with other IP offices. By relying on the search results obtained via these partnerships with other IP offices, the USPTO can reduce duplication of effort and decrease workload. Among the other IP offices with which the USPTO has partnered under the Patent Prosecution Highway Pilot Program are the Japan Patent Office (JPO); the Korean Intellectual Property Office (KIPO); the United Kingdom Intellectual Property Office (UKIPO); the Australian IPO Office (IPAU); the European Patent Office (EPO); and the Danish Patent and Trademark Office (KTPTO).

To participate in the Patent Prosecution Highway program, an applicant must have a ruling from a participant examining authority that at least one claim in an application is patentable. Clearly then some credence must be given to a decision as to claim novelty from a participant examining authority by the US Patent Examiner. In the present case, two participant examining authorities, namely, Australia and the EPO, have examined corresponding patent applications and granted patents to Applicant. While in the past U.S. Examiners have ignored decisions by foreign patent offices with respect to prosecution of corresponding patent applications, Applicant submits that to do so now would be contrary to the intent of the 21st Century Strategic plan. The present application contains claims that specifically define the invention and are commensurate with the allowed claims of the Australian and EPO patent. Applicant urges that the fact that two sister patent examining authorities have allowed claims of a similar or greater scope than the present claims should be recognized in examination of the present application and is a factor favoring allowance of the present application.

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Favorable reconsideration and allowance of the present application are solicited.

Respectfully submitted,

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571-273-8300 on May 12, 2009By: 

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